

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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HERMENEGILDO A. AZARCON,

Plaintiff-Appellee,

v

MICHAEL E. JOSEPH,

Defendant-Appellant.

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UNPUBLISHED

February 25, 2000

No. 210967

Macomb Circuit Court

LC No. 95-005920-CZ

Before: Meter, P.J., and Griffin and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order granting plaintiff summary disposition of his claim for renewal of a default judgment previously entered against defendant. We affirm.

On September 2, 1981, plaintiff filed his original action<sup>1</sup> against defendant, Joseph Wisz and All Nations Personnel Service, Limited (All Nations), generally alleging breaches of an oral shareholder agreement and seeking recovery on a demand note allegedly issued by plaintiff to All Nations. Defendant, Wisz and All Nations' motion for summary disposition was granted in part. The claims on which summary disposition were denied were eventually scheduled for trial on December 13, 1985. On that date, a consent judgment in the amount of \$5,000 was entered against Wisz. Defendant failed to appear before the trial court on that date and plaintiff moved for entry of a default judgment. The trial court orally pronounced a \$7,000 default judgment against defendant. On January 13, 1986, the trial court entered a default judgment in that same amount of \$7,000. The trial court, in the prior action, denied defendant's motion for relief from judgment and to set aside the default judgment. Defendant did not appeal that order and has not paid any amount of the default judgment.

On December 19, 1995, plaintiff filed the present action, seeking to renew the \$7,000 default judgment and to recover interest thereon from the date of entry of the judgment. Thereafter, plaintiff brought a motion for summary disposition pursuant to MCR 2.116(C)(10). The trial court granted summary disposition, renewing the \$7,000 default judgment and awarding interest pursuant to MCL 600.6013; MSA 27A.6013. Defendant's subsequent motion for reconsideration and motion for leave to amend his answer to add a statute of limitations defense were denied.

On appeal, defendant first argues that the trial court erred in granting summary disposition because the default judgment entered against defendant was void as there were no remaining claims against defendant in that prior suit. We disagree. On appeal, this Court reviews de novo a trial court's decision regarding a summary disposition motion. *Roberson v Occupational Health Centers of America, Inc.*, 220 Mich App 322, 324; 559 NW2d 86 (1996). A motion pursuant to MCR 2.116(C)(10) tests the factual basis of a claim. In reviewing such a motion, the test is set forth in *Quinto v Cross & Peters Co.*, 451 Mich 358, 362; 547 NW2d 314 (1996):

In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).

See also *Maiden v Rozwood*, 461 Mich 109, 119-121; 597 NW2d 817 (1999).

Count three of plaintiff's original complaint alleged that defendant participated in conduct that constituted a breach of contract. The trial court's order granting partial summary disposition in the prior case specifically denied summary disposition as to count three. A trial court speaks through its written orders. *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977); *People v Davie*, 225 Mich App 592, 600; 571 NW2d 229 (1997). Given that there was a remaining breach of contract claim against defendant, the trial court had jurisdiction to enter the default judgment against defendant. A court has jurisdiction over the subject matter of a case if it is apparent from the allegations within the complaint that the matter is within the class of cases over which the court has power. *Neal v Oakwood Hosp Corp*, 226 Mich App 701, 707-708; 575 NW2d 68 (1997). A breach of contract claim is within a circuit court's general jurisdiction. See MCL 600.605; MSA 27A.605. Consequently, defendant may not collaterally attack the propriety of the default judgment. See *Dow v Scully*, 376 Mich 84, 88-89; 135 NW2d 360 (1965).

Defendant argues next that the present action was time-barred. We disagree. MCL 600.5809; MSA 27A.5809 provides the applicable statute of limitations:

(1) A person shall not bring or maintain an action to enforce a noncontractual money obligation unless, after the claim first accrued to the person or to someone through whom he or she claims, the person commences the action within the applicable period of time prescribed by this section.

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(3) Except as provided in subsection (4), the period of limitations is 10 years for an action founded upon a judgment or decree rendered in a court of record of this state,

or in a court of record of the United States or of another state of the United States, from the time of the rendition of the judgment or decree.

Defendant claims that the default judgment was rendered for purposes of starting the limitations period when the trial court pronounced, on December 13, 1985, that the default judgment would be granted. Therefore, defendant asserts, plaintiff's present suit, which was filed on December 19, 1995, was filed after the limitations period expired.

We are cognizant of the fact that this Court in *Mahrle v Danke*, 216 Mich App 343; 549 NW2d 56 (1996), has distinguished between the judicial acts of rendering judgment and entering a judgment in the context of MCR 2.403(N)(2). In *Mahrle*, this Court looked to the plain meanings of the terms and concluded that a judgment is rendered when it is pronounced, stated, declared, or announced, while entry of a judgment refers to the ministerial act of providing evidence of the judicial act of rendering judgment. *Id.* at 348-349. However, we refuse to apply a similar interpretation to the phrase "rendition of the judgment" in MCL 600.5809(3); MSA 27A.5809(3) because such an interpretation would produce an unreasonable result, inconsistent with the purpose of the statute. See *Rowell v Security Steel Processing Co*, 445 Mich 347, 354; 518 NW2d 409 (1994). Interpreting the time at which a trial court orally pronounces a judgment to be the point at which the limitations period begins to run would result in undue confusion regarding when the period begins and ends. It is well settled that a trial court speaks through its written orders, not through its oral statements or written opinions. *Tiedman, supra* at 576; 255 NW2d 632 (1977); *Davie, supra* at 600. Thus, absolute certainty with regard to the period during which a party may file suit under MCL 600.5809; MSA 27A.5809 can only be achieved if the limitations period is said to begin on the date of entry of a judgment.

Here, the default judgment was entered on January 13, 1986. Plaintiff's filing of the present suit on December 19, 1995, was therefore timely. Accordingly, there is no merit to defendant's claim that the trial court erred in denying his motion for leave to amend his answer to include a statute of limitations defense as the addition of that defense would be futile. *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997).

Defendant further argues that summary disposition of plaintiff's present claim for renewal of the default judgment was satisfied by Wisz' payment of the \$5,000 consent judgment. We disagree. The consent judgment entered against Wisz and the default judgment against defendant were separate and Wisz' payment of the \$5,000 consent judgment did not affect defendant's obligation to pay the \$7,000 default judgment.

Finally, defendant argues that the trial court erred in awarding interest on the \$7,000 default judgment. We disagree. We review an award of interest pursuant to MCL 600.6013; MSA 27A.6013 de novo. *Beach v State Farm Mut Auto Ins Co*, 216 Mich App 612, 623-624; 550 NW2d 580 (1996). The default judgment entered against defendant was a money judgment on which interest was properly awarded pursuant to MCL 600.6013; MSA 27A.6013. Plaintiff is entitled to interest despite the fact that the default judgment did not specifically provide for such. See *Dep't of Treasury v Central Wayne Co Sanitation Auth*, 186 Mich App 58, 64; 463 NW2d 120 (1990).

The trial court properly awarded interest at a rate of twelve percent per annum compounded annually pursuant to MCL 600.6013(4); MSA 27A.6013(4), as the suit that led to the default judgment was filed on September 2, 1981.

Affirmed.

/s/ Patrick M. Meter  
/s/ Richard Allen Griffin  
/s/ Donald S. Owens

<sup>1</sup> Macomb Circuit Court file No. 81-010924-CK.